

There is no transcript of proceedings for the February 28, 1997, hearing before the Special Administrative Law Judge. For purposes of this review, the record consists of the transcript of the settlement hearing before Special Administrative Law Judge Bradley E. Ambrosier on November 12, 1996, and the exhibits attached thereto. At that hearing the attorneys made certain representations and stipulations which need not be specified. The claimant's attorney presented his claim for expenses and attorney fees. The Special Administrative Law Judge approved attorney fees in the requested amount but requested from claimant's attorney further itemization for certain expenses for which reimbursement

was being sought from the settlement proceeds. The Order of February 28, 1997, followed and resulted in this appeal.

ISSUES

It appears from the language in his February 28, 1997, Order that the only issue before the Special Administrative Law Judge was the expense request of claimant's attorney. The Special Administrative Law Judge approved all of Mr. Herdoiza's listed out-of-pocket expenses with one exception. The Special Administrative Law Judge requested further explanation for certain expenses listed as Item No. 13 on the statement attached to the November 12, 1996, settlement hearing transcript. These expenses, in the amount of \$235.44, were described as "opening new file expenses; traveling and lodging expenses; office expenses, postage expenses."

The claimant's Application for Review by the Kansas Workers' Compensation Board and Docketing Statement lists the following issues:

"1. Based upon the facts contained in the record of this case and the applicable law, claimant submits that the court erred by exercising authority to approve or disapprove expenses incurred in litigation.

"2. That the Administrative Law Judge lacked jurisdiction to review itemized expenses and general expenses of claimant's attorney as part of the process of reviewing and approving attorneys fees.

"3. That the Administrative Law Judge lacked jurisdiction to review 'sua sponte' and without request of the claimant, the itemized expenses and general expenses of claimant's attorney.

"4. That it is not the practice nor within the jurisdiction of this Special Administrative Law Judge nor any other Special or Regular Administrative Law Judge in Kansas to review the itemized expenses and general expenses of any claimant's attorneys.

"5. Due to the Special Administrative Law Judge's action, claimant's itemized expenses have been held in trust since the settlement hearing was heard in Liberal, Kansas, on November 12, 1996. Although the attorneys fees were approved in full and attorney Herdoiza complied with the Special Administrative Law Judge's first inquiry with a written explanation of the itemized and general expenses, the Special Administrative Law Judge has directed attorney Herdoiza to continue to hold said funds in trust, all outside the Special Administrative Law Judge's jurisdiction.

“6. That the Special Administrative Law Judge has caused needless delay in the disbursement of funds in this matter which constitutes an abuse of discretion.”

The relief sought by claimant’s attorney is stated as :

“Claimant respectfully requests the Workers’ Compensation Board to stay the Order of February 28, 1997 and to direct the Special Administrative Law Judge to cease and desist from further review of litigation expenses in claimant’s attorneys cases and further that an Order be issued allowing claimant’s attorney to obtain itemized and general expenses in this case.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and the brief submitted by counsel, the Appeals Board finds as follows:

The Order should be affirmed.

Claimant’s attorney cites no authority for his position that a special administrative law judge lacks authority to approve or disapprove expenses incurred during litigation as a part of the process of reviewing and approving attorney fees. The Appeals Board disagrees.

Special local administrative law judges are statutorily authorized by K.S.A. 1996 Supp. 44-551(d). That statute provides that they shall “exercise the same powers as provided by this section for the regular administrative law judges.”

K.S.A. 1996 Supp. 44-551(b)(1) states:

“(b) (1) Administrative law judges shall have power to administer oaths, certify official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, documents and records to the same extent as is conferred on the district courts of this state, and may conduct an investigation, inquiry or hearing on all matters before the administrative law judges.” (Emphasis added.)

K.S.A. 44-536(b) provides:

“(b) All attorney fees in connection with the initial or original claim for compensation shall be fixed pursuant to a written contract between the attorney and the employee or the employee’s dependents, which shall be subject to approval by the director in accordance with this section. Every attorney, whether the disposition of the original claim is by agreement, settlement, award, judgment or otherwise, shall file the attorney contract with

the director for review in accordance with this section. The director shall review each such contract and the fees claimed thereunder as provided in this section and shall approve such contract and fees only if both are in accordance with all provisions of this section. Any claims for attorney fees not in excess of the limits provided in this section and approved by the director shall be enforceable as a lien on the compensation due or to become due. The director shall specifically and individually review each claim of an attorney for services rendered under the workers compensation act in each case of a settlement agreement under K.S.A. 44-521 and amendments thereto or a lump-sum payment under K.S.A. 44-531 and amendments thereto as to the reasonableness thereof. In reviewing the reasonableness of such claims for attorney fees, the director shall consider the other provisions of this section and the following:

- (1) The written offers of settlement made prior to representation;
- (2) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal services properly;
- (3) the likelihood, if apparent to the employee or the employee's dependents, that the acceptance of the particular case will preclude other employment by the attorney;
- (4) the fee customarily charged in the locality for similar legal services;
- (5) the amount of compensation involved and the results obtained;
- (6) the time limitations imposed by the employee, by the employee's dependents or by the circumstances;
- (7) the nature and length of the professional relationship with the employee or the employee's dependents; and
- (8) the experience, reputation and ability of the attorney or attorneys performing the services."

The Appeals Board finds that reimbursement of litigation expenses are part of the attorney's contract with the claimant and are thus subject to review by the director.

In his letter brief to the Appeals Board, claimant's former attorney states that the Special Administrative Law Judge has not questioned the expenses of other attorneys and alleges that he was singled out by the Special Administrative Law Judge "for this type of treatment." Counsel characterized his treatment by the Special Administrative Law Judge as "abusive, unfair and clear error." It is not clear what purpose these comments could be intended to serve unless to show bias or prejudice on the part of the Special Administrative Law Judge. If that is their purpose, then this is not the method by which such a concern is to be raised. See Dixon v. United Parcel Service, Docket No. 206,758 (June 1996) and Henning v. Fort Scott Family Physicians, Docket No. 147,308 (June 1996).

Finally, counsel for claimant argues that the Special Administrative Law Judge has caused needless delay in the disbursement of funds in this matter and that this constitutes

an abuse of discretion. The statutes regulating attorney fees under the Workers Compensation Act were not enacted for the benefit of the attorney; rather, they were enacted to enable claimants to obtain competent counsel. They are part of a statutory scheme intended primarily to benefit injured workers by securing prompt payment of the benefits provided by the Act. See Hatfield v. Wal-Mart Stores, Inc., 14 Kan. App. 2d 193, 786 P.2d 618 (1990). It appears from the limited record that the only disbursement that has been delayed in this matter is the amount necessary to cover claimant's counsel's claim for attorney fees and expenses. We do not find any order directing claimant's counsel to withhold disbursing the settlement proceeds to claimant. Be that as it may, the Special Administrative Law Judge's Order of February 28, 1997, provides that claimant's attorney is to provide an itemization of the expenses in question within 10 days. It further states that "in the event information is not received from Mr. Herdoiza within 10 days of this order, the same will be disallowed." The Appeals Board finds the order does not cause or create an unreasonable delay.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Special Administrative Law Judge Bradley E. Ambrosier dated February 28, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: C. Albert Herdoiza, Kansas City, KS
Kerry McQueen, Liberal, KS
Bradley E. Ambrosier, Special Administrative Law Judge
Kenneth S. Johnson, Administrative Law Judge
Philip S. Harness, Director